

## § 46.73

condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart.

*Duty or duties.* Any duty or duties paid under the customs laws of the United States.

*Removal or remove.* The removal of tobacco products or cigarette papers or tubes from the factory, or release of such articles from Customs custody.

*Sale price.* The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 40.22 or 41.39 and used in computation of the tax.

*Tax paid or determined.* The internal revenue tax on tobacco products and cigarette papers and tubes which has actually been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return.

*Tobacco Products.* Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

*United States.* When used in a geographical sense, includes only the States, and the District of Columbia.

[T.D. 6392, 24 FR 5300, June 30, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.72, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### PAYMENTS

#### § 46.73 Circumstances under which payment may be made.

An appropriate TTB officer shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of customs duty paid, on tobacco products, and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States on and after September 3, 1958. Such payments may be made only if, at the time of the disaster, such tobacco products, or cigarette papers or tubes were being held for sale by the claimant. No payment shall be made under this subpart with respect to any

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amount of tax or duty claimed or to be claimed under any other provision of law or regulations.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

### CLAIMS PROCEDURE

#### § 46.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on TTB Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999]

#### § 46.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products,

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substantially as shown in the examples below:

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000 .....	Small cigars .....	\$1.828 per thousand .....	36.56
1,000 .....	Large cigars—sale price \$100/thousand.	20.719% of sale price .....	20.72
500 .....	Large cigars—sale price \$236/thousand.	\$48.75 per thousand .....	24.38
10,000 .....	Small cigarettes .....	\$19.50 per thousand .....	195.00
5,000 .....	Large cigarettes .....	\$40.95 per thousand .....	204.75
199,975 .....	Cigarette papers .....	\$0.0122 per 50 papers .....	48.80
1,000 .....	Cigarette tubes .....	\$0.0244 per 50 tubes .....	0.49
100 lbs .....	Chewing tobacco .....	\$0.195 per pound .....	19.50
200 lbs .....	Snuff .....	\$0.585 per pound .....	117.00
100 lbs .....	Pipe tobacco .....	\$1.0969 per pound .....	109.69
300 lbs .....	Roll-your-own tobacco .....	\$1.0969 per pound .....	329.07
Total claimed .....			1,105.96

**EXAMPLE USING RATES FOR APRIL 1, 2009 AND AFTER**

Quantity	Article	Rate of tax	Amount
20,000 .....	Small cigars .....	\$50.33 per thousand .....	\$1,006.60
1,000 .....	Large cigars—sale price \$100/thousand ..	52.75% of sale price .....	52.75
500 .....	Large cigars—sale price \$0.77 per cigar ..	\$0.4026 per cigar .....	201.30
10,000 .....	Small cigarettes .....	\$50.33 per thousand .....	503.30
5,000 .....	Large cigarettes .....	\$105.69 per thousand .....	528.45
199,975 .....	Cigarette papers .....	\$0.0315 per 50 papers .....	126.00
1,000 .....	Cigarette tubes .....	\$0.0630 per 50 tubes .....	1.26
100 lbs .....	Chewing tobacco .....	\$0.5033 per pound .....	50.33
200 lbs .....	Snuff .....	\$1.51 per pound .....	302.00
100 lbs .....	Pipe tobacco .....	\$2.8311 per pound .....	283.11
300 lbs .....	Roll-your-own tobacco .....	\$24.78 per pound .....	7,434.00
Total claimed .....	10,489.10.		

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999, as amended by T.D. TTB-75, 74 FR 14485, Mar. 31, 2009]

**§ 46.76 Supporting evidence.**

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

**§ 46.77 Time and place of filing.**

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for

duty on imported products, must be filed with the appropriate TTB officer.

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

**§ 46.78 Action by appropriate TTB officer.**

The appropriate TTB officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

[T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]